

## Broward County Adopts Regulations That Require Property Owners To Fix Seawalls And Disclose Whether Property Is In 'Tidal-Flooding Area'

Standards are designed to prevent tidal flooding on properties near low and deteriorating seawalls

***April 28, 2020 | Albert J. Slap, Coastal Risk Consulting, and Jeff Marcus, Miller Legg, Inc.***

Broward County has passed an ordinance that sets minimum seawall and top-of-bank elevation standards in areas that are susceptible to flooding from high tides.

On March 31, the county approved a [model code](#) for cities to adopt that spells out regionally consistent minimum standards and a basis for resilient investments across the county. They are projected to be effective until 2070.

The 17 cities in the county that are affected have two years to adopt the standards, which are now part of the county's land-use plan. If a city fails to enact the standards, proposed developments in that city would find it difficult to get county approval.

The new law – the first such countywide ordinance in Florida — establishes “tidal flood barrier infrastructure standards” that, for the very first time, account for sea-level rise caused by climate change. The standards are designed to eliminate flooding from tidewater coming over private seawalls or similar structures and onto neighboring or public properties.



Albert Slap

The law also requires people selling property to disclose if the property is in a tidal-flooding area and that seawalls and other barriers will be subject to the new standards.

The law sets minimum elevations for coastal infrastructure within tidally influenced areas. Structures must be at least 5 feet above an internationally accepted sea-level height called [NAVD88](#). The height applies to all new or substantially repaired or rehabilitated seawalls, banks and berms.

Also, property owners must maintain their barriers in good repair. A seawall is “presumed to be in disrepair, if it allows tidal water to flow unimpeded through or over the barrier and onto adjacent property or public right-of-way.”

A property owner who fails to maintain a seawall and allows water to flood nearby property faces fines. The owner must show that he’s started fixing the wall within 60 days of getting a citation. The owner is required to complete the work in 365 days.

Further, it requires that sellers of property disclose in a “contract for the sale” this language:

“This real estate is located in a tidally influenced area. The owner may be required by county or municipal ordinance to meet minimum tidal flood barrier elevation standards during construction or substantial repair or substantial rehabilitation of seawalls, banks, berms, and similar infrastructure or when required to abate nuisance flooding.”



Jeff Marcus

Many waterfront property owners don’t know much about seawalls and tidal flood barriers. The new disclosure requirement is a step toward greater transparency in coastal real estate transactions.

It is important for both owners and potential buyers to understand that should a seawall require repairs or replacement, permits will most likely be required by local, state, and federal agencies.

Broward County issues licenses for such work. Additional permits may be required from the South Florida Water Management District, the Florida Department of Environmental Protection, and the U.S. Army Corps of Engineers. The type and cost of the permits will be based on a slew of factors.

Here are some of them:

1. length and condition of the original seawall;
2. whether shoreline mangroves are impacted;
3. whether the seawall will be built in front of an old seawall;

4. whether seagrass or critical habitat is impacted;
5. whether corals will be impacted.

The permitting process involves both biological and engineering expertise. The cost of a seawall generally ranges between \$1,200 to \$2,000.00 per linear foot. Permit fees are based on the price of construction.

Broward County charges license fees ranging from \$100 to \$800 depending on the length of the seawall and complexity of the work. For very complicated jobs, all the needed government approvals may take up to 18 months to obtain.

The ordinance is a significant step toward coastal resilience. It is a recognition by county officials that the threats to our coastal way of living are serious and that we are all in the same “leaky boat.”

Local governments have to keep roads and bridges dry, but private property owners also have an important role to play. The new law recognizes that without substantial participation and investments by private property owners (residential and commercial), we will fail to adapt to a wetter and warmer environment.

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